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Committee on Judiciary

Senator Daniel Webster, Chair

Excerpt: Anti-Cohabitation Statutes in Other States

METHODOLOGY

Staff researched statutes, case law, periodicals and laws in Florida and other states relating to modification of alimony. Staff additionally contacted interested parties.

FINDINGS

A few states provide for an automatic termination of alimony upon a showing of cohabitation. More often than not, states that address cohabitation in alimony statutes authorize, rather than require, the court to terminate or modify alimony. Some states provide for a rebuttable presumption in law that a change in financial circumstances occurs when there is cohabitation.

Anti-Cohabitation Statutes in Other States

Several states have passed laws that authorize modification or termination of alimony payments upon a showing that the recipient former spouse is living with or cohabiting with another person. These states include the following: California, Connecticut, Georgia, Illinois, Oklahoma, New York, South Carolina, Tennessee, Utah, and West Virginia.⁵⁰ Of these, some authorize modification but not termination, such as California, Connecticut, Georgia, Oklahoma, and Tennessee.⁵¹ Some states automatically terminate alimony upon a showing of cohabitation, such as in Alabama, Louisiana, and Texas.⁵² A showing of cohabitation creates a rebuttable presumption that financial circumstances have changed in states such as California and Tennessee.⁵³ In Pennsylvania, although alimony is precluded in statute where the recipient is cohabiting with a third person, courts have allowed it to continue if the dissolution agreement does not contain a cohabitation clause.⁵⁴

States That Authorize Modification or Termination of Alimony

Connecticut

Connecticut law authorizes the court to modify a final judgment and to:

Suspend, reduce or terminate the payment of periodic alimony upon a showing that the party

receiving the periodic alimony is living with another person under circumstances which the court finds should result in the modification, suspension, reduction or termination of alimony because the living arrangements cause such a change of circumstances as to alter the financial needs of that party.⁵⁵

Georgia

Georgia law provides that the voluntary cohabitation of a recipient can be a basis for modification of alimony payments.⁵⁶ Although Georgia law does not recognize automatic cessation of alimony in the event of cohabitation, parties are still free to contract for such an immediate result.⁵⁷

Illinois

Unless otherwise determined by the court, Illinois law requires a termination of alimony upon a showing that the recipient "cohabits with another person on a resident, continuing conjugal basis."⁵⁸ Courts have interpreted "conjugal" to indicate a husband and wife type of relationship.⁵⁹

New York

New York law authorizes the court to cease payment of alimony upon a showing that a wife is habitually living with another man and holding herself out as his wife, without being married to him.⁶⁰

To prove that an alimony recipient is habitually living with another man, a payor is required to show that:

- The recipient had a relationship with someone of the opposite sex;
- The recipient was living with that person in a capacity other than that of a roommate or housemate; and
- Cohabitation was habitual.⁶¹

In reviewing an equal protection challenge to the statute, the New York Supreme Court upheld the cohabitation statute, but indicated that the phrase "habitually living with another man and holding

⁵⁰ *Pattberg v. Pattberg*, 130 Misc.2d 893, 497 N.Y.S.2d 251, 254 (1985).

⁵¹ *Id.* at 895.

⁵² *Id.* at 895.

⁵³ Carolyn Sievers Reed, *Alimony Modification and Cohabitation in North Carolina*, 63 N.C.L.Rev. 794 (1985).

⁵⁴ See, e.g., *Miller v. Miller*, 48 Pa. D. & C.3d 211 (1987).

⁵⁵ CONN. GEN. STAT. Section 46b-86 (2004).

⁵⁶ GA. CODE ANN. Section 19-6-19(b) (2004).

⁵⁷ *Metzler v. Metzler*, 267 Ga.892, 485 S.E.2d 459, 461 (1997).

⁵⁸ ILL. COMP. STAT. Section 750-510(c) (2004).

⁵⁹ *In re Marriage of Sappington*, 106 Ill.2d 456, 478 N.E.2d 376, 381 (1985).

⁶⁰ N.Y. DOM. REL. LAW Section 248 (2004); To date, the Legislature has failed to make this provision gender-neutral.

⁶¹ *Markhoff v. Markhoff*, 225 A.D.2d 1000, 639 N.Y.S.2d 565, 567 (1996).

herself out as his wife' has previously given rise to some controversy and the question of what conduct on the part of the ex-wife was sufficient to satisfy the statute had long troubled the courts."⁶² Occasional contact does not suffice,⁶³ but a relationship of as little as six months has been determined to constitute habitual involvement.⁶⁴

Where the evidence showed that a recipient maintained an exclusive relationship with a member of the opposite sex and introduced him as her husband, and the third party listed his address at the recipient's house, was writing checks from an account with the recipient's address on it, and moved his personal effects into the recipient's residence, the court found that the facts showed sufficient cohabitation so as to warrant termination of alimony.⁶⁵

South Carolina

The South Carolina Legislature recently added continued cohabitation as an additional basis for termination of periodic alimony.⁶⁶ Continued cohabitation is defined as:

The supported spouse [residing] with another person in a romantic relationship for a period of ninety or more consecutive days.⁶⁷

West Virginia

The West Virginia Code provides:

In the discretion of the court, an award of spousal support may be reduced or terminated upon specific written findings by the court that since the granting of a divorce and the award of spousal support a de facto marriage has existed between the spousal support payee and another person.⁶⁸

In determining what constitutes a "de facto" marriage, the statute includes such considerations as:

- The extent to which the ex-spouse and the other person hold themselves out as a married couple;
- The period of time that the recipient has

resided with another person not related in a permanent residence;

- The extent to which financial assets are pooled;
- The extent to which the recipient and the third party support each other; and
- Whether the recipient and third party have jointly contributed in the purchase of property.⁶⁹

States That Mandate Termination of Alimony upon Proof of Cohabitation

Alabama

In Alabama, a former spouse's periodic alimony obligation automatically terminates when the receiving spouse remarries or cohabitates.⁷⁰ The Alabama Court of Civil Appeals has held that the term "periodic alimony", by definition, means that payments to a former spouse will terminate upon death, remarriage, or cohabitation.⁷¹ The Alabama Supreme Court has ruled that a payor's responsibility automatically ceases from the actual date that the recipient begins cohabitating with a third party.⁷² A payor is not eligible for reimbursement where he or she does pay, however.⁷³

Pennsylvania

To constitute cohabitation, the payor must prove two events: some permanency of relationship and more than occasional sexual activity.⁷⁴

Texas

Alimony terminates where the recipient cohabits with another person in a "permanent place of abode on a continuing, conjugal basis."⁷⁵ Also, alimony is limited to maintenance payments of generally no longer than three years.⁷⁶ Additionally, a presumption is created in Texas law against the award of maintenance unless the spouse has proven certain conditions.⁷⁷

⁶² *Pattberg*, 497 N.Y.S.2d at 894.

⁶³ *See Watson v. Watson*, 39 A.D.2d 660, 331 N.Y.S.2d 730 (1972).

⁶⁴ *See Bliss v. Bliss*, 107 A.D.2d 684, 487 N.Y.S.2d 26 (1985).

⁶⁵ *Markhoff*, 225 A.D. 2d at 1001, 1002.

⁶⁶ *Joye v. Yon*, 355 S.C. 452, 586 S.E.2d 131, 133 (2003).

⁶⁷ S.C.CODE ANN., Section 20-3-130(B)(1) (2002).

⁶⁸ W.VA.CODE Section 48-5-5707(a)(1) (2004).

⁶⁹ W.VA.CODE, Section 48-5-5707(a)(2) (2004).

⁷⁰ ALA. CODE Section 30-2-55 (2004) reads, in part: "Any decree of divorce providing for periodic payments of alimony shall be modified by the court to provide for the termination of such alimony upon petition of a party to the decree and proof that the spouse receiving such alimony has remarried or that such spouse is living openly or cohabiting with a member of the opposite sex." *See generally Heaston v. Nabors*, 2004 WL 596089 (Ala.Civ.App.).

⁷¹ *Wheeler v. Wheeler*, 831 So.2d 629 (Ala.Civ.App. 2002).

⁷² *Ward v. Ward*, 782 So.2d 1285, 1288 (Ala. S.Ct. 2000).

⁷³ *Id.* at 1288.

⁷⁴ *Tolbert v. Teets*, 27 Pa. D. & C.3d 106, 111, 1983 WL 193 (1983).

⁷⁵ TEX. FAM. CODE ANN., Chapter 8, Section 8.056 (2004).

⁷⁶ TEX. FAM. CODE ANN., Chapter 8, Section 8.054 (2004).

⁷⁷ TEX. FAM. CODE ANN., Chapter 8, Section 8.053 (2004).

Rebuttable Presumption in Modification Cases

California

California law provides that a presumption is created that financial circumstances have changed where a former spouse is cohabiting.⁷⁸ The courts have held that the Legislature created the presumption "based on thinking that cohabitation...creates a change of circumstances so tied in with the payment of spousal support as to be significant enough by itself to require a re-examination of whether such need for support continues in such a way that it still should be charged to the prior spouse."⁷⁹

Judicial Consideration of Cohabitation in the Absence of Statutory Authority

Several jurisdictions have considered cohabitation as a factor in terminating alimony, even in the absence of statutory authority.

Arkansas

A finding of cohabitation triggered an Arkansas court to review a change in financial circumstances and end alimony payments based on that finding.⁸⁰

Mississippi

Although Mississippi law does not address cohabitation as a basis for termination of alimony, courts have created a test for determining modification of alimony on this basis. This test is whether cohabitation is occurring, whether the recipient is being supported by or is supporting the third party, and whether the recipient's financial needs have changed.⁸¹

New Jersey

Again, New Jersey does not have an actual law providing for termination of alimony where there is cohabitation. However, the Superior Court indicated that cohabitation can generally constitute grounds for alimony modification where there is a concomitant economic benefit.⁸² In fact, where the payor makes a prima facie showing of cohabitation, a rebuttable presumption is created that shifts the burden to the recipient to show that no actual economic benefit is

being received.⁸³

Cohabitation Clauses in Settlement Agreements

Divorce settlement agreements providing for termination of alimony in the event of subsequent cohabitation have become increasingly common. Courts have routinely upheld these clauses, where there is sufficient evidence of cohabitation.⁸⁴

The New Jersey Supreme Court has, however, refused to honor a settlement clause where there was no recognition of an economic needs inquiry.⁸⁵ Here the court based its decision on both its "stated public policy to guarantee individual privacy, autonomy, and the right to develop personal relationships,"⁸⁶ and long standing precedent providing that the test for modification is whether the relationship has financially changed the needs of the recipient, even where a cohabitation clause exists.⁸⁷ The New Jersey Supreme Court subsequently did authorize a cohabitation clause to stand, where the parties previously agreed that cohabitation would constitute a material changed circumstance, and the contractual provision was fair.⁸⁸

Florida Case Law on Alimony

Critical to the court's determination of alimony in Florida is the length of marriage. The impact of cohabitation on continuation of alimony is not addressed in statute, but a showing of cohabitation triggers a court inquiry regarding whether there has been an attendant change in circumstances. In fact, a presumption of changed circumstances may apply. Courts have terminated alimony payments based on the existence of a cohabitation clause in a dissolution agreement.

Length of Marriage

In a short-term marriage, the standard of living enjoyed by the parties does not merit much consideration.⁸⁹ The approach taken by courts is typically that "a permanent alimony award is generally inappropriate in a short-term marriage unless the dissolution created a genuine

⁷⁸ 2004 Cal. Stat. Section 4323.

⁷⁹ *In Re Marriage of Bower*, 96 Cal.App.4th 893, 117 Cal.Rptr.2d 520, 525 (2002).

⁸⁰ *See Herman v. Herman*, 335 Ark.36, 977 S.W.2d 209 (1998).

⁸¹ *Hammonds v. Hammonds*, 641 So.2d 1211, 1217 (Miss. S.Ct. 1994).

⁸² *Conlon v. Conlon*, 335 N.J.Super. 638, 763, A.2d 339, 343 (2000).

⁸³ *Rose v. Csapo*, 359 N.J.Super.53, 818 A.2d 340, 344 (2002).

⁸⁴ *See generally, Oakley v. Oakley*, 599 S.E.2d 925 (2004) (North Carolina); *Coe v. Coe*, 2004 WL 1620787 (Ohio); *Feinberg v. Hollister*, 2004 WL 835974 (Virginia); *Bennett v. Bennett*, 133 S.W.3d 487 (2004) (Kentucky).

⁸⁵ *See Melletz v. Melletz*, 271 N.J. Super. 359, 638 A.2d 898 (1994).

⁸⁶ *Id.* at 901.

⁸⁷ *See Gayet v. Gayet*, 92 N.J. 149, 456 A.2d 102 (1983).

⁸⁸ *See Konzelman v. Konzelman*, 158 N.J. 185, 729 A.2d 7,13 (1999).

⁸⁹ *Ho, supra* note 5, at 71.

inequity.⁹⁰ In contrast, in a long-term marriage, a rebuttable presumption is created in favor of permanent alimony.⁹¹ It appears that the line for determining a long-term marriage is generally drawn at a minimum of 14 years.⁹² The Fifth District Court of Appeal considered a marriage of 15 years to be more than a short-term marriage, but not automatically a long-term marriage.⁹³ Rather, this length of marriage falls into a "gray area", consistent with rulings in the First and Second Districts.⁹⁴ Marriage lengths which qualify as falling into a "gray area" warrant examination of other relevant factors, without a presumption, prior to an award of permanent alimony.⁹⁵

Cohabitation

Under Florida law, alimony is not automatically terminated upon a showing of cohabitation.⁹⁶ Though courts do not recognize de facto remarriage as the sole basis for ending court ordered alimony,⁹⁷ they have authorized a modification of alimony upon a showing of cohabitation provided that the financial impact of the cohabitation is considered.⁹⁸ Cohabitation does not automatically equal marriage for purposes of alimony modification, as the court in *Springstead* indicated: "Because it does not entail the same benefits, duties and rights as a traditional marriage, cohabitation alone cannot precipitate a termination of alimony without the factual finding of a change in circumstances concerning the former spouse's needs and finances."⁹⁹ Still, the First District Court of Appeal indicated that a presumption of changed circumstances arises where cohabitation is proven, thereby shifting the burden to the cohabitant.¹⁰⁰ In determining the financial impact of cohabitation, the standard is not what the third party should be contributing, but what is actually contributed, such that the additional income is not imputed by the court.¹⁰¹ However, the court may modify alimony even based on temporary cohabitation where it is proven that financial contributions were

made during the period of cohabitation.¹⁰²

The Fourth District Court of Appeal ruled that where a dissolution agreement clearly provides for termination of alimony in the event of cohabitation, it must be upheld irrespective of a change in financial circumstances.¹⁰³ In this case, the agreement provided that alimony would terminate upon the wife's remarriage, the husband's death, or the wife's cohabitation with another man, defined as an unmarried union or relationship of more than 30 days, whether or not consecutive in time.¹⁰⁴ As the settlement agreement represents a negotiated document, the court indicated its provisions are interpreted in accordance with the law on contracts.¹⁰⁵ As such, alimony must be terminated in the event of cohabitation without consideration of financial impact, where it is so clearly stipulated in a settlement agreement.¹⁰⁶

RECOMMENDATIONS

Although current Florida Statutes do not mandate termination of alimony based on cohabitation, Florida courts do consider a change in financial circumstances upon a showing of cohabitation. A 2004 proposed amendment to the state constitution and legislation proposed during the 2004 Legislative Session required an automatic termination of alimony in the event of cohabitation, such a requirement is law in only a few other states. Most other states that statutorily address this issue authorize judicial discretion in termination of alimony payments. Should the Legislature again wish to consider legislation in the 2005 session, it may wish to review language similar to that in West Virginia law, which provides for the termination of alimony upon a showing of a de facto marriage, and identifies various factors to be considered in determining whether a de facto marriage exists. As Florida statute stipulates that modification or termination is to apply retroactively only to the date that the action is filed, and considering the award of permanent alimony is in a continuing and rapid decline, mandating termination of alimony may not result in significant change prospectively. Additionally, cohabitation clauses appear much more frequently in settlement agreements, which largely resolves the issue at the time of dissolution.

⁹⁰ *Segall v. Segall*, 708 So.2d 983 (4th DCA 1998).

⁹¹ *Ho*, *supra* note 5, at 72.

⁹² *Id.* at 72; see *Knoff v. Knoff*, 751 So.2d 167 (Fla. 2d DCA 2000); *Young v. Young*, 677 So.2d 1301 (Fla. 5th DCA 1996); *Cruz v. Cruz*, 574 So.2d 1117 (Fla. 3d DCA 1990); *Levy v. Levy*, 2003 WL 22240196 (Fla. 3d DCA 2003).

⁹³ *Young*, 677 So.2d at 1305.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ See *Tanner v. Tanner*, 850 So.2d 610 (1st DCA 2003).

⁹⁷ *Bridges v. Bridges*, 842 So.2d 983, 984 (1 DCA 2003).

⁹⁸ *Springstead v. Springstead*, 717 So.2d 203, 204 (5th DCA 1998).

⁹⁹ *Springstead*, 717 So.2d at 205.

¹⁰⁰ *Bridges*, 842 So.2d at 984.

¹⁰¹ *Cheney v. Cheney*, 741 So.2d 565, 566 (4th DCA 1999).

¹⁰² *Donoff v. Donoff*, 777 So.2d 1078, 1079 (4th DCA 2001).

¹⁰³ *Robinson v. Robinson*, 788 So.2d 1092 (4th DCA 2001).

¹⁰⁴ *Id.* at 1093.

¹⁰⁵ *Id.* at 1094.

¹⁰⁶ *Id.*